THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY

WRIT PETITION Nos. 6504 of 2002 & 5016 of 2007

% 5-06-2007

Between:

K.S.R.Brahmam

... Petitioner

and

Government of A.P., rep. By Special Chief Secretary, Transport, Roads & Buildings (Transport-III) Department & others.

... Respondents

! Counsel for the Petitioner : Sri Kakara Venkat Rao & Sri B.Sivarama Krishnaiah

^ Counsel for Respondents : The Advocate-General, Sri Kallakuri Srinivasa Rao The GP for Transport.

<Gist :

>Head Note :

? Citations:

1. AIR 1985 SUPREME COURT 1651
2. AIR 1987 SUPREME COURT 628
3. AIR 1990 KARNATAKA 182
4. 2000 (2) ALT 465

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COMMON ORDER:

In these two writ petitions, G.O.Ms.No.148, Transport, Roads & Buildings (Transport-III) Department, dated 24.11.2001, and G.O.Ms.No.27, dated 8.3.2002, issued by the same Department, are challenged.

The petitioners are operators of contract carriages in the State of A.P. They engaged their vehicles for hire, by obtaining special or temporary permits, under Sections 87 or 88 of the Motor Vehicles Act (for short "the Act"). Some of them have obtained All India Tourist permits from the competent authority, for their vehicles.

Various unions of employees of A.P.State Road Transport Corporation (for short "the Corporation") have formed themselves into a Joint Action Committee, to press their demands. One of the complaints made by them was the alleged failure on the part of the government, to curb the illicit operation of contract carriages. According to them, such

operations were adversely affecting the collections for the buses of the Corporation, being operated on several routes. A general strike was called for, and it remained in force from 15.10.2001 to 7.11.2001. Settlement was arrived at, in the meeting of the representatives of the government, the Corporation and the employees. The government agreed in principle, to curb the illicit plying and operation of contract carriages. To evolve a suitable mechanism for this purpose, the government issued G.O.Ms.No.148, dated 24.11.2001, constituting a committee to suggest the steps to be taken, to curb the illicit operations and to monitor the follow up action. The committee comprised of the officials of the Departments of Transport and Police. In addition to them, the Managing Director of the Corporation and representatives of the employees of the Corporation were also included. Similar arrangement, at the city/district level, was provided, through G.O.Ms.No.27 dated 8.3.2002. The Regional Managers of the concerned units were included in the district level committees.

The petitioners contend that the impugned G.Os are contrary to the provisions of the Act and the Rules made there under. It is also their case that the government has no authority to include the officials of the Corporation, or the representatives of the trade unions in the committees, which are supposed to discharge executive functions.

On behalf of the State Government, a counter affidavit is filed, narrating the circumstances that led to the issuance of the impugned G.Os. It is stated that illicit operation of private buses has assumed such a disturbing proportion, that the Corporation was facing severe threat. It is also pleaded that unless the Corporation, which is operating 95% of the buses in the state, is accorded proper protection, public interest would be severely affected.

A separate counter affidavit is filed by the Corporation. Apart from adopting the stand of the State Government, the Corporation had furnished the relevant factual material that warranted the issuance of impugned G.Os. The Corporation stated that it had absolutely no objection, or concern, for the operation of private buses, in accordance with the provisions of the Act and the Rules, and their grievance is only about the illicit operations.

Sri E.Manohar, learned senior counsel appearing for the petitioners, submits that the Act and the Rules made thereunder are a self-contained code, and apart from providing for the issuance of licences and permits, they also prescribe the procedure to ensure proper compliance and to prevent violations thereof. He submits that the Corporation, for all practical purposes, is one of the operators, and it cannot be entrusted with the right or responsibility, to curb the alleged illicit operations. He submits that specific powers are conferred upon various authorities, under the Act, and entrustment of statutory functions to the Corporation, or its employees, runs contrary to the very spirit of rule of law. He places reliance upon certain precedents.

Learned Special Government Pleader for the State, on the other hand, submits that the impugned G.Os are issued, in exercise of powers under Article 162 of the Constitution of India, and they are not traceable to any provisions of the Act, or Rules. He submits that the committee is not conferred with any statutory, or executive powers, and the object in issuing the G.Os, is only to monitor the enforcement of the provisions of the Act. He questions the *locus standi* of the petitioners.

Sri K.Srinivasa Rao, learned Standing Counsel for the

Corporation, submits that the steps taken by the government, to protect the interests of the Corporation, which is operating 95% of the services, is in public interest, and the petitioners do not have any genuine grievance for the same. Learned counsel submits that the Corporation suffered heavy loss, on account of the illicit plying of vehicles in the city, and the petitioners cannot object to curbing of illicit operations.

The circumstances that led to the issuance of the G.Os are mentioned in the orders themselves. One of the items, in the charter of demands presented by the Joint Action Committee of the employees of the Corporation, was about the illicit plying of private passenger vehicles in the city. They never pleaded that the operators must not be given the special or temporary permits, in accordance with the provisions of the Act and the Rules. Their grievance was only about operation of the buses, contrary to the said provisions. Irrespective of the agency chosen to curb the illegal practices, the petitioners cannot be heard to say that the illegalities must remain unchecked.

Different authorities are constituted, under the Act and the Rules. At the district level, the Regional Transport Authority, and at the state level, the State Transport Authority, functions. These authorities, in turn, are assisted and aided by various subordinate officials. Powers are conferred to grant, renew, suspend, or cancel the permits of different categories. If any steps are taken by the respondents to confer the statutory powers upon the officials of the Corporation, or the representatives of their employees, certainly they would be liable to be denounced. Statutory powers, or for that matter, the executive powers, cannot be conferred upon outsiders, who are not part of the set up, under the relevant provisions of the law. After referring to the

circumstances that led to the constitution of committee, the nature of activities to be undertaken, are stated in G.O.Ms.No.148, dated 24.11.2001, as under:

> "The Committee should identify the nature and the modes of transport that are indulging in illicit operations in various parts of the State. It should evolve administrative and penal action to deter and curb such illicit operations. The Committee also should monitor the enforcement and follow up action continuously and closely and suggest corrective measures wherever required. The Committee will also suggest appropriate modifications to the existing administrative and legal provisions to strengthen the enforcement. The Committee will design a plan of action to be reviewed and renewed from time to time, to ensure its efficacy."

For district and town level committees also, similar functions are entrusted. From the above, it is clear that except that the committee was asked to suggest the methods of curbing the illicit operations and to monitor the enforcement, it is not conferred with any powers, to seize or otherwise proceed with, against any vehicle. As and when any violations are noticed, they are to be brought to the notice of the concerned authority of the Transport Department.

It is not in dispute that 95% of the routes in the state are being served by the Corporation. The government cannot be oblivious, or remain indifferent, to the developments that are adversely affecting the interests of the Corporation. When law provides for creation of monopoly in favour of the Corporation, and even nationalization of existing routes, the steps taken to curb the illegalities, adversely affecting the Corporation, cannot be said to be unreasonable or illegal. At the cost of repetition, it can be said that not a semblance of statutory power is conferred upon the committees constituted under the

impugned G.Os.

The principle laid down by the Supreme Court in ***M/S. KRISHNA BUS SERVICE PVT. LTD. v. STATE OF HARYANA***[1], does not apply to the present case. In that case, the General Manager of the State Transport Undertaking was conferred with the powers of Deputy Superintendent of Police, under Section 133-A of the Motor Vehicles Act, 1939. It was stated that such conferment was contrary to Section 133A, and public interest.

Similarly, in ***ISHWAR SINGH BAGGA v. STATE OF RAJASTHAN***[2], it was held that powers under Sections 129, 129-A and 133 of the Motor Vehicles Act 1939, cannot be conferred upon officers of the State Transport Undertaking. No such powers are conferred in the instant case.

The petitioners place reliance upon the judgment of the Karnataka High Court in ***K.R.BHASKARNANDA v. STATE OF KARNATAKA***[3]. The Karnataka High Court had set aside an order of the State Government, appointing the Official Director of the KSRTC, as a member of the State Transport Authority. It was observed that the statutory powers under the Act cannot be discharged by the officials of a Corporation. The purport of the G.Os impugned in the instant case, is totally different.

The judgment of this court in ***APSRTC v. TRANSPORT COMMISSIONER***[4], has absolutely no relevance to the facts of the present case. This court declined to issue a Writ of Mandamus, at the instance of the APSRTC, against the Transport Commissioner, to declare that the inaction on the part of the latter, to stop plying of

unauthorized vehicles on the notified routes, as illegal, arbitrary and contrary to Sections 86 and 207 of the Motor Vehicles Act. In a way, several observations made in that case lend support to the impugned G.Os. This court took note of the directions issued by the Supreme Court in several cases, to the effect that the grievance of public sector undertakings, *vis-à-vis* governments must be resolved by appointing committees. The same is done through the impugned G.Os.

Even otherwise the petitioner cannot be said to have suffered any grievance, on account of the impugned orders. The only person or agency, that would be affected by the impugned orders, is the one, who is indulging in illicit operation of transport vehicles on the notified routes. No person can say with impunity, that he would ply the vehicles, in contravention of the provisions of the Motor Vehicles Act and the Rules, and that such activities cannot be curbed. Conversely, as long as the person, or agency, is plying the vehicle, in accordance with the permit, he cannot have any grievance about the mechanism evolved, to curb the illicit plying of vehicles. Viewed from any angle, this court does not find any basis to grant relief to the petitioners.

The writ petition is accordingly dismissed. There shall be no order as to costs.

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L.NARASIMHA REDDY, J

Dt: 5th June 2007

N.B:

L.R. copies to be marked.

(b/o)

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[1] AIR 1985 SUPREME COURT 1651

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